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5 Attorneys for Plaintiff
Environmental Research Center
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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
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12 ENVIRONMENTAL RESEARCH) **Case No.:** 30-2013-00635134-CU-MC-CJC
CENTER, a California non-profit)
13 corporation,)
14 Plaintiffs,) **COMPLAINT FOR INJUNCTIVE**
) **RELIEF AND CIVIL PENALTIES**
15 vs.) **[Health & Safety Code § 25249.5, et seq.]**
)
16 AYUSH HERBS, INC., individually and) **[UNLIMITED CIVIL CASE - AMOUNT**
doing business as R-U-VED, and DOES 1-) **DEMANDED EXCEEDS \$25,000)]**
17 25, Inclusive,)
18 Defendants,) **Judge Thierry Patrick Colaw**
19

20 Plaintiff Environmental Research Center, Inc. brings this action in the interests of the
21 general public and, on information and belief, hereby alleges:

22 **INTRODUCTION**

23 1. This action seeks to remedy Defendants' continuing failure to warn consumers in
24 California that they are being exposed to lead, a substance known to the State of California to
25 cause cancer, birth defects and other reproductive harm.

26 2. Defendants have manufactured, packaged, distributed, marketed, sold and/or have
27 otherwise been involved in the chain of commerce of, and continue to manufacture, package,
28 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of the

1 following ingestible products, which contain the chemical lead and which have been and
2 continue to be offered for sale, sold and/or otherwise provided for use and/or handling to
3 individuals in California:

- 4 a. Ayush Herbs, Inc. Eleg Fem
- 5 b. Ayush Herbs, Inc. Pippli
- 6 c. Ayush Herbs, Inc. Purush
- 7 d. Ayush Herbs, Inc. Livit 2
- 8 e. Ayush Herbs, Inc. Guggal-Lip
- 9 f. Ayush Herbs, Inc. Thyro-M
- 10 g. Ayush Herbs, Inc. Bio Gymnema
- 11 h. Ayush Herbs, Inc. Flucomune
- 12 i. Ayush Herbs, Inc. CoCurcumin Drink Mix
- 13 j. Ayush Herbs, Inc. Amla Plex
- 14 k. Ayush Herbs, Inc. Ayush Face Pack - Lead
- 15 l. Ayush Herbs Inc. Bos Welya
- 16 m. Ayush Herbs Inc. Rentone
- 17 n. Ayush Herbs Inc. Neem Plus
- 18 o. R-U-VED, Inc. For Health & Longevity Psyllium Husk Powder
- 19 p. R-U-VED, Inc. Amla Plus Immune Support Enhanced Chavanprash
- 20 q. Ayush Herbs Inc. R-U-VED, Inc. Intestone Intestinal Support
- 21 r. Ayush Herbs Inc. R-U-VED, Inc. Gymnema Metabolic Support
- 22 s. Ayush Herbs Inc. R-U-VED, Inc. Sitawari Women's Health Support
- 23 t. Ayush Herbs Inc. R-U-VED, Inc. Livtone Liver Support
- 24 u. Ayush Herbs Inc. R-U-VED, Inc. Flucomune Immune Support
- 25 v. Ayush Herbs Inc. R-U-VED, Inc. Memoren Stress & Cognitive Support

26 These listed products are hereinafter referred to together as "THE PRODUCTS".

27 3. The use and/or handling of THE PRODUCTS causes exposures to lead at levels
28 requiring a "clear and reasonable warning" under California's Safe Drinking Water and Toxic

1 Enforcement Act of 1986, Health & Safety Code (“H&S Code”) §25249.5, *et. seq.* (also known
2 as “Proposition 65”). Defendants have failed to provide the health hazard warnings required by
3 Proposition 65.

4 4. The continued manufacturing, packaging, distributing, marketing and/or sales of
5 THE PRODUCTS without the required health hazard warnings, causes individuals to be
6 involuntarily and unwittingly exposed to levels of lead that violate Proposition 65.

7 5. Plaintiff seeks injunctive relief enjoining Defendants from the continued
8 manufacturing, packaging, distributing, marketing and/or selling of THE PRODUCTS for sale or
9 use in California without first providing clear and reasonable warnings, within the meaning of
10 Proposition 65, regarding the risks of cancer, birth defects and other reproductive harm posed by
11 exposure to lead through the use and/or handling of THE PRODUCTS. Plaintiff seeks an
12 injunctive order compelling Defendants to bring each of its business practices into compliance
13 with Proposition 65 by providing clear and reasonable warnings to each individual who may be
14 exposed to lead from the use and/or handling of THE PRODUCTS. Plaintiff also seeks an order
15 compelling Defendants to identify and locate each individual person who in the past has
16 purchased the PRODUCTS, and to provide to each such purchaser a clear and reasonable
17 warning that the use of the PRODUCTS will cause exposures to Lead.

18 6. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties to
19 remedy Defendants’ failure to provide clear and reasonable warnings regarding exposures to the
20 lead.

21 **JURISDICTION AND VENUE**

22 7. This Court has jurisdiction over this action pursuant to California Constitution
23 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except
24 those given by statute to other trial courts.” The statute under which this action is brought does
25 not specify any other basis for jurisdiction.

26 8. This Court has jurisdiction over Defendants because, based on information and
27 belief, each Defendant is a business having sufficient minimum contacts with California, or
28 otherwise intentionally availing itself of the California market through the marketing,

1 distribution and/or sale of THE PRODUCTS in the State of California to render the exercise of
2 jurisdiction over it by the California courts consistent with traditional notions of fair play and
3 substantial justice.

4 9. This Court is the proper venue for this action because each Defendant has violated
5 California law in the County of Orange. Furthermore, this Court is the proper venue under Code
6 of Civil Procedure §395.5 and H&S Code §25249.7(a), which provides that any person who
7 violates or threatens to violate H&S Code §§25249.5 or 25249.6 may be enjoined in any court of
8 competent jurisdiction.

9 **PARTIES**

10 10. Plaintiff Environmental Research Center, Inc. (“ERC”) is a non-profit corporation
11 organized under California’s Non-Profit Benefit Corporation Law. ERC is dedicated to, among
12 other causes, reducing the use and misuse of hazardous and toxic substances, consumer
13 protection, worker safety and corporate responsibility.

14 11. ERC is a person within the meaning of H&S Code §25118 and brings this
15 enforcement action in the public interest pursuant to H&S Code §25249.7(d).

16 12. ERC alleges on information and belief that Defendant AYUSH HERBS, INC. is a
17 Washington Corporation that does business in its own name and in its brand name R-U-VED,
18 and it is a person within the meaning of H&S Code §25249.11(a).

19 13. Defendants manufactured, packaged, distributed, marketed, sold and/or have
20 otherwise been involved in the chain of commerce, and continues to manufacture, package,
21 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of
22 THE PRODUCTS for sale or use in California. Defendants employ ten or more persons, and are
23 thus each a “person in the course of doing business” within the meaning of Proposition 65.

24 14. Defendants DOES 1-50 are named herein under fictitious names, as their true
25 names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon
26 alleges, that each of said DOES has manufactured, packaged, distributed, marketed, sold and/or
27 has otherwise been involved in the chain of commerce of, and continues to manufacture,
28 package, distribute, market, sell, and/or otherwise continues to be involved in the chain of

1 commerce of THE PRODUCTS for sale or use in California, and/or is responsible, in some
2 actionable manner, for the events and happenings referred to herein, either through its conduct or
3 through the conduct of its agents, servants or employees, or in some other manner, causing the
4 harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true
5 names and capacities of DOES when ascertained.

6 15. Plaintiffs are informed and believe and thereon allege that each of the defendants
7 is in some manner responsible for the events set forth in this Complaint and proximately caused
8 the injuries and damages to Plaintiffs as alleged in this Complaint.

9 16. Plaintiff is informed and believes and thereon alleges that at all material times,
10 defendants, and each of them, were the agents, servants, and employees of the other defendants,
11 and each of them in such a way as to cause each defendant to be jointly and severally liable and
12 responsible for the conduct of one another. The conduct of each defendant was within the course
13 and scope of the authority granted each defendant by the other defendants. Each defendant
14 ratified and approved of the acts or omissions of each other such as to cause each to be jointly
15 and severally liable for the conduct of each other defendant.

16 **STATUTORY BACKGROUND**

17 17. The People of the State of California have declared in Proposition 65 their right
18 “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
19 reproductive harm.” (Section 1(b) of Initiative Measure, Proposition 65).

20 18. To effect this goal, Proposition 65 requires that individuals be provided with a
21 “clear and reasonable warning” before being exposed to substances listed by the State of
22 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent
23 part:

24 No person in the course of doing business shall knowingly and
25 intentionally expose any individual to a chemical known to the state to
26 cause cancer or reproductive toxicity without first giving clear and
27 reasonable warning to such individual....

28 19. Proposition 65 provides that any person who “violates or threatens to violate” the

1 statute “may be enjoined in any court of competent jurisdiction.” (H&S Code §25249.7(a).)
2 “Threaten to violate” is defined to mean creating “a condition in which there is a substantial
3 probability that a violation will occur.” (H&S Code §25249.11(e).) Violators are liable for civil
4 penalties of up to \$2,500 per day for each violation of Proposition 65. (H&S Code §25249.7(b).)

5 **FACTUAL BACKGROUND**

6 20. On February 27, 1987, the State of California officially listed the chemical lead as
7 a chemical known to cause developmental and reproductive toxicity. Lead became subject to the
8 warning requirement one year later and was therefore subject to the “clear and reasonable”
9 warning requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of
10 Regulations (“CCR”) §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

11 21. On October 1, 1992, the State of California officially listed the chemical lead as a
12 chemical known to cause cancer. Lead became subject to the warning requirement one year later
13 and was therefore subject to the “clear and reasonable” warning requirements of Proposition 65
14 beginning on October 1, 1993. (27 CCR §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

15 22. Plaintiff is informed and believes, and based on such information and belief,
16 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in
17 California without the requisite clear and reasonable warnings before, on, and after September
18 13, 2009. THE PRODUCTS continue to be marketed, distributed and sold in California without
19 the requisite warning information.

20 23. As a proximate result of acts by Defendants, as a person in the course of doing
21 business within the meaning of H&S Code §25249.11(b), individuals throughout the State of
22 California, including in the County of Orange, have been exposed to lead without clear and
23 reasonable warnings. The individuals subject to exposures to lead include normal and
24 foreseeable users of THE PRODUCTS, as well as all other persons exposed to THE
25 PRODUCTS.

26 24. At all times relevant to this action, Defendants have knowingly and intentionally
27 exposed the users and/or handlers of THE PRODUCTS to lead without first giving clear and
28 reasonable warnings to such individuals.

1 was provided, with the Notices of Violations, a copy of a document entitled “The
2 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
3 Summary,” which is also known as Appendix A to Title 27 of CCR § 25903.

4 c. The California Attorney General was provided, with the Notices of Violations,
5 additional factual information sufficient to establish a basis for the Certificate of
6 Merit, including the identity of the persons consulted with and relied on by the
7 certifier, and the facts, studies, or other data reviewed by those persons, pursuant
8 to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

9 30. The appropriate public enforcement agencies have failed to commence and
10 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendants
11 based on the allegations herein.

12 31. By committing the acts alleged in this Complaint, Defendants at all times relevant
13 to this action, and continuing through the present, have violated and continue to violate H&S
14 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
15 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding
16 allowable exposure levels without Defendants first giving clear and reasonable warnings to such
17 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured,
18 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of
19 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise
20 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,
21 and will be used and/or handled by individuals in California, without Defendants providing clear
22 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,
23 birth defects and other reproductive harm posed by exposure to lead through the use and/or
24 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code
25 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
26 for use and/or handling to individuals in California.

27 32. By the above-described acts, Defendants have violated H&S Code §25249.6 and
28 are therefore subject to an injunction ordering Defendants to stop violating Proposition 65, and to

1 provide required warnings to consumers and other individuals who will purchase, use and/or
2 handle THE PRODUCTS.

3 33. An action for injunctive relief under Proposition 65 is specifically authorized by
4 Health & Safety Code §25249.7(a).

5 34. Continuing commission by Defendants of the acts alleged above will irreparably
6 harm the citizens of the State of California, for which harm they have no plain, speedy, or
7 adequate remedy at law.

8 35. Wherefore, plaintiff prays judgment against Defendants, as set forth hereafter.

9 **SECOND CAUSE OF ACTION**

10 **(Civil Penalties for Violations of Health and Safety Code §25249.5, et seq.)**

11 36. Plaintiff hereby incorporates by reference each and every preceding allegation and
12 paragraph as though fully set forth in this cause of action.

13 37. On October 21, 2011, June 19, 2012 and September 17, 2012, Plaintiff sent
14 separate 60-Day Notice of Proposition 65 violations to the requisite public enforcement agencies
15 (“Notices of Violations”). Each of the Notices of Violations were sent to AYUSH HERBS, INC.
16 in its individual capacity and/or in its capacity of doing business as R-U-VED. THE
17 PRODUCTS were identified in the Notices of Violations as containing lead exceeding allowable
18 levels. The Notices of Violations were issued pursuant to, and in compliance with, the
19 requirements of H&S Code §25249.7(d) and the statute’s implementing regulations regarding the
20 notices of violations to be given to certain public enforcement agencies and to the violator. The
21 Notices of Violations were issued as follows:

- 22 a. Defendant AYUSH HERBS, INC., individually and doing business as R-U-VED,
23 and the California Attorney General were provided copies by Priority Mail of the
24 Notices of Violations, along with a Certificate of Merit by the attorney for the
25 noticing party stating that there is a reasonable and meritorious cause for this
26 action. The requisite county district attorneys and city attorneys were provided
27 copies by Priority Mail of the Notices of Violations and Certificate of Merit.
28 b. Defendant AYUSH HERBS, INC., individually and doing business as R-U-VED,

1 was provided, with the Notices of Violations, a copy of a document entitled “The
2 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
3 Summary,” which is also known as Appendix A to Title 27 of CCR § 25903.

4 c. The California Attorney General was provided, with the Notices of Violations,
5 additional factual information sufficient to establish a basis for the Certificate of
6 Merit, including the identity of the persons consulted with and relied on by the
7 certifier, and the facts, studies, or other data reviewed by those persons, pursuant
8 to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

9 38. The appropriate public enforcement agencies have failed to commence and
10 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendants
11 based on the allegations herein.

12 39. By committing the acts alleged in this Complaint, Defendants at all times relevant
13 to this action, and continuing through the present, have violated and continue to violate H&S
14 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
15 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding
16 allowable exposure levels without Defendants first giving clear and reasonable warnings to such
17 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured,
18 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of
19 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise
20 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,
21 and will be used and/or handled by individuals in California, without Defendants providing clear
22 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,
23 birth defects and other reproductive harm posed by exposure to lead through the use and/or
24 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code
25 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
26 for use and/or handling to individuals in California.

27 40. By the above-described acts, Defendants are liable, pursuant to H&S Code
28 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6

1 relating to THE PRODUCTS.

2 41. Wherefore, plaintiff prays judgment against Defendants, as set forth hereafter.

3 **THE NEED FOR INJUNCTIVE RELIEF**

4 42. Plaintiff hereby incorporates by reference each and every preceding allegation and
5 paragraph as though fully set forth in this cause of action.

6 43. By committing the acts alleged in this Complaint, Defendants have caused
7 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence of
8 equitable relief, Defendants will continue to create a substantial risk of irreparable injury by
9 continuing to cause consumers to be involuntarily and unwittingly exposed to lead through the
10 use and/or handling of THE PRODUCTS.

11 **PRAYER FOR RELIEF**

12 Wherefore, Plaintiff prays for the following relief against Defendant AYUSH HERBS,
13 INC. in its individual capacity and in its capacity of doing business as R-U-VED:

14 A. A preliminary and permanent injunction enjoining each Defendant, its agents,
15 employees, assigns and all persons acting in concert or participating with each Defendant, from
16 manufacturing, packaging, distributing, marketing and/or selling THE PRODUCTS for sale or
17 use in California without first providing clear and reasonable warnings, within the meaning of
18 Proposition 65, that the users and/or handlers of THE PRODUCTS are exposed to the lead;

19 B. An assessment of civil penalties against Defendant, pursuant to Health & Safety
20 Code §25249.7(b), in the amount of \$2,500 per day for each violation of Proposition 65;

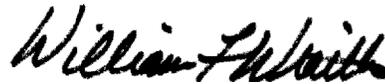
21 C. An award to Plaintiff of its reasonable attorney fees pursuant to California Code
22 of Civil Procedure §1021.5 or the substantial benefit theory;

23 D. An award of costs of suit herein; and

24 E. Such other and further relief as may be just and proper.

25 Dated: March 4, 2013

WRAITH LAW



27 By: _____

28 WILLIAM F. WRAITH
Attorney for Plaintiff Environmental
Research Center